



Article Title: U.S.A. v. Council

Origin: U.S. District Court, Richmond Virginia

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Author: James R. Spencer – Chief U.S. District Judge

**Article's Subject Matter: A criminal trial defendant's motion to exclude the admissibility of expert friction ridge evidence – the motion was quashed by the Court.**

### Key Points in Article

#### Fingerprint Examiner

- Sarah Dwyer, a latent fingerprint examiner for the Virginia Department of Forensic Science (VDFS) individualized a palm print impression developed on a firearm allegedly used in a crime, to a palm print belonging to the accused (Raynard Council).
- The latent fingerprint examiner testified that she adhered to SWGFAST examination standards, applying the ACE-V methodology to make the individualization in question.
- The examiner's result was verified by a second examiner, also applying ACE-V. Moreover, the two examiners didn't confer with one another, and the first examiner's results were unknown to the second examiner (blind verification).

#### Defence

- Council's defence was to challenge the reliability of the latent fingerprint examiner's methodology, and the methodology of friction ridge individualization in general.
- Defence introduced a witness, Dr. Mnookin (law professor at UCLA who focuses on forensic science evidence, and validation of the scientific process). Dr. Mnookin is not a fingerprint examiner.
- Dr. Mnookin questioned the validity of ACE-V as a scientific method, stating that it doesn't describe a scientific method, but rather helps examiners engage in "careful looking".
- Dr. Mnookin testified further, stating that:
- ACE-V lacks objective criteria to determine whether a print is fit for analysis and comparison, and, therefore, relies almost entirely on the experience and intuition of the examiner;



- ACE-V tells the examiner (at the analysis phase) whether a print is fit for comparison, but does not explain how to make that determination, or how many characteristics suffice to make that judgment;
- No Studies have shown that ACE-V is consistently successful, and it cannot demonstrate its error rate (the examiner addressed this point by explaining that friction ridge analysis is susceptible to some error rate since the examiner could possibly misapply ACE-V).

### The Court

- After hearing both the fingerprint examiner's and Dr. Mnookin's testimony, the court decided, in light of *Daubert's* recommended considerations, that:
- The fingerprint examiner's / verifier's technique is widely accepted in the relevant scientific community;
- Dr. Mnookin's testimony does not outweigh the acceptance friction ridge analysis has gained from numerous forensic experts and law enforcement officials;
- Friction ridge experts maintain widely recognized standards, and the examiner applied those standards to the prints at issue in his case;
- Describing the process the examiner undertook as "careful looking" unfairly suggests that a layperson not subject to those standards could effectively perform the same task;
- *Daubert* requires the Court to ensure that the examiner's methods were reliable, and does not demand of expert testimony "such a high degree of intellectual purity" that an underlying procedure must be "truly scientific in an intellectual, abstract sense" in order to be admitted.
- The objections advanced by defence go to the weight of the examiner's testimony, and not its admissibility;
- "Friction ridge analysis is subject to testing every time an examiner excludes the owner of a known print as the owner of a latent print, as a result that in turn prevents an innocent individual from standing trial for a crime he did not commit. The Court would effectively disallow this manner of testing if it awarded Council the relief he seeks".
- The fingerprint examiner's evidence was admitted into Court.

### Fallacies and or Issues

- The author writes, referring to the examiner's testimony, that : "...she did not need to count all of them [identifying characteristics] in order to establish a usable profile."
- The author writes, referring to the examiner's testimony, that: "Dwyer [fingerprint examiner] ultimately plotted fourteen distinguishing characteristics she would compare to Council's known print.



- About the examiner's explanation of ACE-V, the author writes: "At the analysis stage... [the examiner] determines whether the print is sufficiently clear, or too distorted, to allow identification of distinguishing points and characteristics on the print... the examiner finds and records the quality and quantity of various points and characteristics..."

Although the three examples above seem to imply that the examiner was "counting points", it's unlikely that a fingerprint examiner trained in the U.S., and adhering to SWGFAST standards would engage in such a practice. A likelier explanation is that the Court interpreted the examiner's testimony, and made a "counting points" inference, perhaps based on dated experience with past fingerprint examiners' testimony.

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